SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. —

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER,

vs.

ELIZABETH ELLIS DURR

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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a In United States Court of Appeals for the Third Circuit

No. 9811

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

ELIZABETH ELLIS DURR

Appendix to Brief for Appellant

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1 In United States District Court for the District of New Jersey

Docket Entries

9-10-48. Complaint filed.

9-10-48. Notice of Allocation (Newark) filed.

9-10-48. Summons filed.

9-10-48. Hearing on oral application for restraint, and Order to Show Cause. Ordered application granted (Smith).

9-10-48. Ordered application that service of complaint and Order to Show Cause be made by attorney for plaintiff on attorney for defendant, Granted (Smith).

9-10-48. Order to Show Cause and Temporary Restraining Order, filed (Smith) (ret. 9-13-48).

9-10-48. Summons return served on 9-10-48, filed.

9-14-48. Hearing on application for preliminary injunction. Ordered temporary restraint continued for ten days. (Smith) (9-13-48).

9-14-48. Answer filed 9-13-48.

9-15-48. Affidavit of Elizabeth E. Durr, filed 9-13-48.

9-15-48. Temporary Restraining Order filed (Smith). Notice mailed.

9-17-48. Final hearing on motion for issuing permanent injunction. Ordered Temporary injunction dissolved and motion for permanent injunction denied. Findings of Fact and Conclusions of Law to be filed (Fake).

9-20-48. Findings of Fact and Conclusions of Law, filed (Fake).

9-20-48. Order for final judgment dismissing complaint, without costs, filed (Fake). Notice mailed.
2 9-30-48. Notice of Appeal, filed 9-28-48.
9-30-48. Transcript of Testimony, filed.
9-30-48. Record on Appeal forwarded to the USCCA.

3 In United States District Court

Complaint—Filed Sept. 10, 1948

Defendant's Address: 108 S. Kingman Road, S. Orange, New Jersey, or c/o Her Attorneys Martin & Reiley, 744 Broad Street, Newark, New Jersey.

1. Plaintiff is presently the duly appointed, qualified Housing Expediter, of the Office of the Housing Expediter.

2. Plaintiff invokes the jurisdiction of this Court under subsection (b) of Section 206 of the Housing and Rent Act of 1947, as amended (Public Law No. 129, 80th Congress; Public Law 422, 80th Congress, Chapter 77, 2nd Session; Public Law 464, 80th Congress, 2nd Session; hereinafter referred to as the "Act."

3. In Plaintiff's judgment the defendant has engaged in or is about to engage in acts and practices hereinafter more particularly alleged, which constitute or will constitute a violation of Section 206 and 209 of the "Act."

4. At all times pertinent hereto, the defendant was a person under the aforementioned "Act," and the Regulation thereunder, entitled to receive rentals for housing accommodations, the
4 rentals of which are controlled by the said "Act" and regulations issued thereunder said housing accommodations being rented by the defendant at the following address, 74 Murray Street, Newark, New Jersey, said premises being in the Northeastern, New Jersey Defense-Rental Area.

5. Section 209 of the "Act" provides that no action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent, in effect shall be maintainable notwithstanding the fact that the tenant has no lease or that such lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless under the law of the state in which the action or proceeding is brought the tenant is violating the obligation of her tenancy or is committing a nuisance or using such housing accommodation for an immoral or illegal purpose or for other than dwelling purposes or the landlord seeks in good faith to recover possession for his immediate and personal use or the landlord has in good faith contracted in writing to sell the housing accommodation to a purchaser for the immediate and per-

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sonal use and occupancy as housing accommodations by such purchaser or the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering or remodelling the same for continued use as housing accommodations and the altering, remodelling or conversion cannot practically be done with the tenant in occupancy or for the immediate purpose of demolishing such housing accommodations or the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market.

6. DOROTHY BLAKE is the tenant occupying the premises at 74 Murray Street, Newark, New Jersey.

7. The maximum legal rent for the aforesaid apartment at the aforesaid premises is $65.00 per month.

8. The tenant, Dorothy Blake, has always paid or offered to pay her rent when due.

9. The tenant is not violating any obligation of her tenancy.

10. The tenant is not committing a nuisance.

11. The tenant is not using the aforesaid housing accommodations for an immoral or illegal purpose.

12. The landlord is not seeking in good faith to recover possession of the said housing accommodations for any of the reasons permitted under Section 209 of the "Act" or as set forth and permitted under paragraph 5 herein.

13. The defendant has instituted proceedings to regain possession in the Essex County Circuit Court on the ground that the defendant desires to sell the premises in a vacant condition so that the same might be more readily saleable contrary to the provisions of the Housing and Rent Act of 1947, as amended.

WHEREFORE, the plaintiff prays for:—

A preliminary and final injunction enjoining the defendant, defendant's agents, servants, employees, attorneys and marshals, and all persons in active concert or participation with defendant jointly and severally from violating the Housing and Rent Act of 1947, as amended, and as heretofore or hereafter amended or superseded; violating the Housing and Rent Act of 1947, as amended and as heretofore or hereafter amended or superseded by evicting or proceeding to evict the tenant, DOROTHY BLAKE, in any form or manner contrary to the provisions of the said "Act"; engaging in any action or course of action the purpose of which is to evict illegally tenant

or tenants from the premises located at 74 Murray Street, Newark, New Jersey, or any other Housing Accommodation owned, controlled, or managed by the defendant or from evicting said tenant or tenants in any form or manner contrary to the Housing and Rent Act of 1947, as amended, extended or superseded.

Dated: Newark, New Jersey, September 9, 1948.

SYLVAN D. FREEMAN,
Chief, Litigation Section,
Office of the Housing Expediter,
350 Fifth Avenue, New York City 1, N. Y.,
Attorney for Plaintiff;

MAX W. MEISNER,
Chief Area Rent Attorney.

Address of Attorney on whom all papers are to be served:

MAX W. MEISNER,
151 Washington Street,
Newark, New Jersey.

7 In United States District Court

Order to Show Cause and Temporary Retraining Order—September 10, 1948

Upon the complaint filed herein, the annexed affidavit of Benjamin E. Spindel, duly sworn to the 9th day of September, 1948, the affidavit of Dorothy Blake duly sworn to the 2nd day of September, 1948 and the affidavit of Sidney A. Brass duly sworn to the 2nd day of September, 1948, and it further appearing that unless restrained forthwith, the defendant will continue to engage in said acts and practices, and that thereby immediate and irreparable injury will be done to the public in that such acts and practices cause unwarranted rent increases and seriously affect the housing program and the price structure of the nation, and it further appearing that as long as the defendant continues to engage in said acts and practices, and any judgment that this Court will render in final determination of this cause will be to that extent of no effect, and the Court being duly advised in the premises:

It is hereby ordered that the defendant appear and show cause at a stated term of this Court for the hearing of motions in civil actions to be held in the United States Courthouse for the District of New Jersey, Federal Post Office Building, Newark, New Jersey, at 10:00 A. M. on the 13th day of September, 1948, of said day or as soon thereafter as counsel can be heard, why an order should

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not be made effective during the pendency of this action directed to the defendant and defendant's agents, servants, employees, attorneys and marshals, and all persons in active concert or participation with any of them jointly and severally:

8 A. *Enjoining and Restraining Them From:*

1. Violating the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, as heretofore or hereafter amended or superseded.

2. Violating the Housing and Rent Act of 1947, as amended, and as heretofore or hereafter amended or superseded by evicting or proceeding to evict the tenant, Dorothy Blake, in any form or manner contrary to the Housing and Rent Act of 1947, as amended, as heretofore or hereafter amended or superseded.

3. Engaging in any action or course of action, the purpose of which is to evict illegally the tenant or tenants from the premises at 74 Murray Street, Newark, New Jersey, or any other housing accommodations owned, controlled or managed by the defendant or from evicting said tenant or tenants in any form or manner contrary to the Housing and Rent Act of 1947, as amended, and Regulations thereunder, as heretofore or hereafter amended or superseded.

B. *Such Other and Further Relief as May Be Just and Proper*

Sufficient cause appearing,

It is further ordered from the date of service of a copy of this order and during such additional period, if any, as may be ordered by this Court, the defendant and defendant's servants, agents, employees, attorneys and marshals, and all persons in active
9 concert or participation with any of them be and they hereby are temporarily restrained from engaging in and causing any of the acts or omissions to act specified in paragraph A of this order.

Let service of a copy of this order together with a copy of the papers upon which it is issued be good and sufficient, if made upon the above named defendant or her attorneys on or before the 10th day of September, 1948.

Dated: Newark, New Jersey, September 10th, 1948.

(S) WILLIAM J. SMITH,
Judge, United States District Court for the District of New Jersey.

In United States District Court

Affidavit in Support of Order to Show Cause

STATE OF NEW YORK,
County of New York, ss:

Benjamin E. Spindel, being duly sworn, deposes and says:

That he is a Litigation Attorney in the Office of the Housing Expediter and is fully familiar with this case.

I have read the affidavit of Dorothy Blake, annexed hereto, and from the said affidavit, it appears that Dorothy Blake is the
10 tenant of controlled housing accommodations located at 74 Murray Street, Newark, New Jersey.

The defendant is the owner and operator and the person entitled to collect the rents for the aforementioned premises.

It further appears that Dorothy Blake has always paid or offered to pay the rent when due and that the maximum legal rent for the premises in question is $65.00 per month.

It further appears that the defendant is seeking to gain possession of the premises in question and to evict the tenant on the ground that the defendant desires to withdraw the premises from the rental market and that such housing accommodations will not thereafter be offered for rent. It also appears that an action to eject the tenant was brought in the Essex County Circuit Court based on the aforementioned ground but in the affidavit filed in that action, it is stated by the defendant that the purpose of seeking possession of the premises is in reality because the defendant herein desires to sell the property in a vacant condition so that the said property would be more desirable to sell.

I have also read the annexed affidavit of Sidney A. Brass, the attorney representing Dorothy Blake in the eviction proceedings in the local Court and from his affidavit, it also appears that the defendant is attempting to evict the tenant Blake in order to sell the premises free and clear of her tenancy so that the property would be thereby more easily and readily saleable.

11 In the aforementioned action in the Essex County Circuit Court annexed to the summons is attached a Bill of Particular's of plaintiff's claim or title to the premises in question. Paragraph 7 of this Bill of Particulars is as follows:

> "7. Plaintiff desires immediate possession of said premises for the immediate purpose of withdrawing said premises from the rental markets and of conveying said premises to a prospective purchaser who desires to occupy said premises as a private residence for himself and his family."

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The defendant also caused a motion to be made for summary judgment in the said proceedings in the Essex County Circuit Court striking out the answer of the tenant Blake in that action and in the motion for summary judgment there is annexed the defendant's affidavit page 6 thereof, wherein the defendant Elizabeth Ellis Durr makes the following statement:

> "I desire to have the premises vacant so that I can put them into shape to sell, and I propose to sell to persons who will occupy the premises and not offer it for rent."

From the foregoing, it clearly appears that the defendant's avowed and true purpose is not to withdraw the premises in question from the rental market, but rather, to offer prospective purchasers vacant premises which, under present housing conditions, are conceivably more readily saleable and for which a better price could be obtained.

12 Section 209(a) of the Housing and Rent Act of 1947, as amended, specifically states that no action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect shall be maintainable in any Court notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled. Certain exceptions are provided for in Section 209 of the said "Act." The pertinent exceptions are Section 209(a)(3) and (5). Section 209(a)(3) is as follows:

> "The landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser."

Section 209(a)(5) is as follows:

> "The landlord seeks in good faith to recover the possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such."

The effect of Subdivision (3) limits the general applicability of Subdivision (5). It follows, therefore, that since Subdivision (3) provides for eviction where the landlord has in good faith contracted in writing to sell the housing accommodations, that Subdivision (5) may not be used in cases where landlords desire to sell the property. Putting it another way, since a tenant may be evicted for

occupancy by a purchaser under Subdivision (3) a tenant
13 may not be evicted under Subdivision (5) for the purpose of obtaining vacant possession in order to sell.

This is exactly the position taken by the Housing Expediter in an interpretation issued by him on May 25, 1948 (Housing and Rent Act Memorandum No. 51). In *Woods* v. *Taper* decided July 27, 1948, in the United States District Court, Southern District, Central Division of California, number 8452-PH, the landlord sought to evict his tenants for the express and avowed purpose of making the housing accommodations vacant in order that the same might be redecorated and thereafter sold to persons who would purchase such housing accommodations for use as their residences. The above is a direct quotation from the findings of fact and conclusions of law in that case. The Court stated through Judge Peirson M. Hall that the withdrawal of rental premises in order to redecorate and offer them for sale to possible buyers for their own residence was not a proper ground for eviction within the meaning of Section 209(a)(5) of the Housing and Rent Act of 1947, as amended.

Section 206(a) of the "Act" provides that it shall be unlawful for any person to do or omit to do any act in violation of the "Act." Section 206(b) of the "Act" empowers the Housing Expediter to * * * enjoin any person who is engaged or is about to engage in violating the provisions of the "Act" and to seek an order enforcing compliance with the provisions of said "Act."

The defendant refuses to desist with her efforts of evicting
14 the tenant Blake and will continue in her efforts to evict the tenant Blake contrary to law unless enjoined by this Court.

No previous application for the relief herein sought has heretofore been made to this or any other Court.

Wherefore, your deponent respectfully prays for a preliminary injunction as is more specifically set forth in the order to show cause herein.

(S) BENJAMIN E. SPINDEL.

Sworn to before me this 9th day of September, 1948.

CHARLES PILLMAN,
Notary Public in the State of New York.
Residing in King's County
Kings Co. Clk's No. 517, Reg. No. 413-P-9
New York County Clk's No. 709
Term Expires March 30, 1949

In United States District Court

Affidavit in Support of Order to Show Cause

STATE OF NEW JORSEY,
County of Essex, ss:

Dorothy Blake, of full age being duly sworn upon her oath deposes and says:

I am the tenant of premises known as 74 Murray Street, Newark, New Jersey which is an eight room one family house and six
15 of these rooms are rented to roomers. These premises are owned by Elizabeth Ellis Durr, who resides at 108 Kingman Road, South Orange, New Jersey.

I have always paid the monthly rent of $65.00 to my landlord and tendered those amounts of rents on the due dates for July and August, but these checks have been returned to me by my landlord who gave me a Notice to Vacate premises on July 1, 1948. This Notice to Vacate, a copy of which is attached hereto, is based on the ground that the landlord requires possession for the immediate *possession* of permanently withdrawing said premises from the rental market.

My landlord does not desire to withdraw the premises from the rental market, but wishes to sell the premises free of my possession contrary to the intent of Congress in providing the grounds for the eviction of tenants of housing accommodations. My landlord caused a "For Sale" sign to be placed on said premises on or about December 1945, which sign is still on the premises. In addition, the brokers agent, who is a sister-in-law of the landlord, has come to the premises on numerous occasions since 1945 with prospects concerning the sale of said premises. At least thirteen people were brought to these premises to inspect same as prospective buyers between August 9th and August 30, 1948. The last occasion when she appeared with a prospective buyer was on August 30, 1948.

As a result of my failure to vacate in accordance with the annexed Notice, my landlord caused an action of ejectment to be
16 brought in the Essex County Circuit Court based on the ground set forth in that Notice and in her affidavit, filed in that cause, admits that the purpose of asking me to vacate is because she wishes to have the premises vacant so that she can put them in shape to sell and proposes to sell to prospects who will occupy the premises. This affidavit is subscribed to on September 1, 1948.

I know that the landlord is seeking to evict me in order to sell these premises free and clear of my tenancy and not for the pur-

poses alleged in the Notice of withdrawing said premises from the rental market.

(S) DOROTHY BLAKE.

Sworn and subscribed to before me this 2nd day of September, 1948.

(S) MAX W. MEISNER,
Master in Chancery of New Jersey.

In United States District Court

Affidavit in Support of Order to Show Cause

STATE OF NEW JERSEY,
County of Essex, ss:

Mr. Sidney A. Brass, of full age, being duly sworn upon his oath deposes and says:

17 I am the attorney for Miss Dorothy Blake, tenant of the premises 74 Murray Street, Newark, New Jersey, which is a one family house occupied by her as her residence, some of the rooms being rented out as furnished rooms.

I represent the tenant in the suit mentioned in her affidavit, and after suit papers were served upon the tenant I communicated on various occasions with Mary C. Durr, a member of the firm of Martin & Reiley, attorneys for the landlord, Elizabeth Ellis Durr, and made various appointments in order that the premises might be shown to prospective purchasers and with Helen M. Durr, as admitted in her affidavit filed in said suit allowing the premises to be shown to prospective purchasers. The said Helen M. Durr, who is a sister-in-law of the landlord and is a real estate broker associated with Sidney T. Baker, a licensed real estate broker who is in charge of the sale of said premises and the sign regarding the sale of said premises is nailed on the porch at 74 Murray Street, Newark, New Jersey.

I know that the landlord is attempting to evict this tenant in order to sell the premises free and clear of the tenancy of the said tenant, Dorothy Blake.

(S) SIDNEY A. BRASS.

Sworn and subscribed to before me this 2nd day of September, 1948.

(S) MAX W. MEISNER,
Master in Chancery of New Jersey.

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18 In United States District Court

Answer to Complaint—Filed September 13, 1948

1. Defendant admits paragraph No. 1, 4, 5, 6, 7, and 8 of said complaint.

2. Defendant has no information as to plaintiff's judgment referred to in paragraph 3 of the complaint, but denies that any acts or practices in which she has engaged, or is about to engage, constitutes or will constitute a violation of said paragraph.

3. Defendant has no information with respect to paragraphs 9, 10 and 11 of said complaint, and neither admits nor denies the same.

4. Defendant is seeking in good faith to recover possession of the premises there mentioned for one of the reasons specifically set forth and permitted under Section 209 of the Act there mentioned, and particularly under Section 209(a)(5) as amended, and, therefore, denies paragraph 12 of the complaint.

5. Defendant admits that she has instituted proceedings to regain possession of said premises in the court mentioned in paragraph 13, on the ground especially provided in the provisions of said act above mentioned.

6. Defendant admits that she desires to sell said premises and states that it is necessary for her to sell said premises, but that she has been prevented from securing a contract in writing
19 for the sale of said premises by the conduct of the tenant, and, therefore, that she is unable to sell said premises while occupied by the tenant unless said tenant will permit full and complete inspection of the premises at reasonable hours by prospective purchasers.

7. Defendant denies that her acts or desires are contrary to the provisions of the act as amended.

Wherefore, defendant prays that the cause be dismissed and the plaintiff be denied any relief whatever under said complaint.

Dated: Newark, New Jersey
September 13, 1948.

MARTIN & REILEY,
Attorneys for Defendant,
744 Broad Street,
Newark 2, New Jersey.

In United States District Court

Temporary Restraining Order Entered September 15, 1948

Plaintiff having moved this Court for a preliminary injunction pending the trial of this action and said motion having been brought on by Order to Show Cause and said Order having by its terms restrained the defendant from certain acts in violation of the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder and said motion having come on to be heard before me on the 13th day of September, 1948 and Sylvan D. Freeman,
20 Esq. (Walter S. Fried, Esq. of counsel) having appeared in support of said motion and Martin and Reiley, Esqs. (J. H. Thayer Martin, Esq. of counsel) having appeared in opposition thereto and due deliberation having been had, it is

Ordered that until the 23rd day of September, 1948 the defendant and defendant's servants, agents, employees, attorneys and marshals, and all persons in active concert or participation with any of them be and they hereby are temporarily restrained from

1. Violating the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, as heretofore or hereafter amended or superseded.

2. Violating the Housing and Rent Act of 1947, as amended, and as heretofore or hereafter amended or superseded by evicting or proceeding to evict the tenant, Dorothy Blake, in any form or manner contrary to the Housing and Rent Act of 1947, as amended, as heretofore or hereafter amended or superseded.

3. Engaging in any action or course of action, the purpose of which is to evict illegally the tenant or tenants from the premises 74 Murray Street, Newark, New Jersey, or any other housing accommodations owned, controlled or managed by the defendant or from evicting said tenant or tenants in any form or manner contrary to the Housing and Rent Act of 1947, as amended, and regulations thereunder, as heretofore or hereafter amended or superseded.

21-A Dated: Newark, New Jersey
September 15th, 1948.

(S.) WILLIAM F. SMITH,
United States District Judge.

Filed: September 15, 1948.

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In United States District Court

Extract from Transcript of Proceedings on Final Hearing Before the District Court September 17, 1948

ELIZABETH ELLIS DURR, the defendant herein, called and sworn on her own behalf, testified as follows:

Direct examination by Mr. MARTIN:

Q. You are the owner of the premises involved in this litigation and the defendant in this case?

A. I am.

Q. I show you plaintiff's exhibit No. 1. You signed that?——

A. I did.

Q. —notice?

A. Yes.

Q. And that notice reads, after the first part of it, "Notice is further given you that such possession is required for the immediate purpose of permanently withdrawing said premises from the rental market," as provided in the section of the act which has been referred to.

A. Yes.

21-B Q. I ask you if you, when you signed that notice and since, have desired to permanently remove those premises from the rental market.

A. Yes, I want to do that.

The COURT: Cross-examine.

Cross-examination by Mr. HODES:

Q. Now, Mrs.—Mrs. or Miss Durr?

A. Mrs.

Q. Mrs. Durr, you have a mortgage of $8,000 on the house, is that right?

A. Yes.

Q. And the mortgagee is requesting payment; it is an open mortgage?

A. Yes.

Q. And you need money to make that payment, isn't that right?

A. I will have to sell the house in order to pay that mortgage.

Q. And that's why you want to get this tenant out, is that right?

A. I have to sell the house in order to pay the mortgage.

Q. And that's why you want to get this tenant out. It is easier to sell——

The COURT: I think that follows, as a matter of fact, of course.

Mr. MARTIN: That's her reason.

The COURT: Certainly.

Mr. MARTIN: We admit that.

21-C *Colloquy Between Court and Counsel*

Mr. HODES: At this point I would like to make a motion to strike out from the record the testimony of all the previous witnesses called by the defendant which dealt with the conduct of the tenant relating to making the subject premises available for inspection by prospective buyers as produced by the defendant landlord, on the ground that it is entirely irrelevant.

The COURT: The motion is denied.

Mr. HODES: May I have an exception?

The COURT: Exception allowed. It has some bearing——

Mr. MARTIN: On the question of good faith.

The COURT: —on the question of good faith. It simply explains the reason why she wants to take it out of rent.

Mr. MARTIN: That's the only reason I introduced it.

The COURT: Is that all?

21-D Mr. HODES: That's all the evidence by the plaintiff.

There is just one question further. I think it will be conceded. The defendant landlord has not contracted in writing as yet to sell the subject premises. Is that correct?

Mr. MARTIN: She has not done so and has not been able to.

Mr. HODES: That's conceded; that she has not done so.

* * * * *

Mr. HODES: Now, if I may, the plaintiff claims that the defendant in the ejectment proceeding is attempting to evict the tenant under the authority of Section 209(a)(5). Plaintiff claims that the papers in the said ejectment proceeding, which have been introduced in evidence here, clearly show that the intention of the defendant in evicting the tenant does not fall within——

The COURT: Why? Because she wants to sell it?

Mr. HODES: That's exactly right, Judge. The argument of the plaintiff is as follows: There are a number of intentions, the attainment of which would result in removing it from the rental market.

The COURT: Just a moment; just a moment. It seems to me that this Section 205 was enacted for one single purpose, to-wit: that where an owner desired, for any reason, to take the property

22 out of the classification of rental property, all the owner had to do was say so and get possession. And there is a penalty connected with it because it provides that it cannot again be placed in the rental sphere.

Mr. MARTIN: Yes.

The COURT: These other sections you have cited were in the statute before the very recent enactment of the section 209(5), and apparently it must have been enacted for the purpose of affording the relief in just such a case as this. I look upon the testimony

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which has been adduced here bearing upon the mental attitude of the owner in showing that the owner desires to sell as mere surplusage. The owner here is not relying on a desire to sell for the relief she seeks.

Mr. MARTIN: No.

The COURT: She is relying here upon the allegation that she wants to remove the property from the sphere of Government control where rent is involved. That, under this act, she has a perfect right to do. I don't see why I should spend very much more time on it.

Mr. HODES: Well, may I call to the Court's attention the provisions of an act which was enacted at the same time as 209(a)(5) and show that the Court's analysis, with all due respect, seems to be——

The COURT: In conflict with the statute?

Mr. HODES: —in conflict?

23 The COURT: I don't see how it possibly could be. Here is a section that stands alone by itself. Now the mere mental attitude of this woman in desiring to sell the property has nothing to do with it at this moment. She wants to get it relieved from the burden of bureaucratic control and that's all. If she can't sell it later, that's another issue. It has nothing to do with what we are here concerned with. Those sections of the statute to which you refer can't be read against this owner because she isn't seeking any relief under them; she is simply explaining why, and I have stricken it out. Therefore I have no evidence before me except one thing: that she wants to remove the house from rental control. So there is no use arguing those things; I have stricken it out.

Mr. HODES: I don't understand what your Honor is referring to.

The COURT: I have stricken out all of the testimony, in conformity with your motion, that would tend to show that the mental attitude of this woman is that she wants to sell the property. I say it has nothing to do with this. It is sufficient that she shows here that she wants to relieve the property from rent control, not to be reinstated for rent control; and that is what her attitude is. The injunction of the Government is——

Mr. HODES: Well, may I have—— I am sorry.

The COURT: I don't know why you want to take time on such a picayune thing.

24 Mr. HODES: Well, I have got to make a record on this case, Judge.

The COURT: All right, make a record.

Mr. HODES: We consider it a very important case.

The COURT: I know. Make a record, and spend a lot of money in appeals, if you want to. It is only the taxpayers' money you are spending, and harassing a property owner that is in distress with the foreclosing of a mortgage in view and trying to save

herself; then comes the Government, trying to ruin her, as near as I can figure it out. And you can let that go upon the record, too.

Mr. HODES: Well, I would like to perform my functions here.

The COURT: Perform your functions and take exceptions.

Mr. HODES: All right. I would like to mention for the record that Section 209(a)(4) subdivision (b) was enacted at the same time as 209(a)(5) and is rendered meaningless in the light of the Court's interpretation of 209(a)(5), for this reason:——

The COURT: I have heard your argument on that and I rule against you and allow you an exception. I say it has no bearing on this at all, because this woman comes in under that one section and she is entitled to come in, and I have stricken all the evidence bearing on her mental attitude about the sale and all that sort of thing; it has nothing to do with it.

25 Mr. HODES: Well, do I understand—what about the contents of the plaintiff's exhibits which are in writing, which are papers prepared or signed by the plaintiff which state what her intentions are?

The COURT: Only so much of those papers as bear upon the issue as to whether she wants to withdraw this property from the rental sphere is before me; the rest of it will be stricken as surplusage.

Mr. HODES: The plaintiff claims that the defendant's intention is to remove this tenant and evict her for the purpose of selling the property; that the intention to remove the premises from the rental market is only a by-product of her ultimate goal.

Thet COURT: And she has a right under the statute to so function.

Mr. HODES: I take exception.

The COURT: She needn't have come here and told the reasons at all. All she needed to do was to come here and say, "I want to remove this property from the sphere of rental control." And the Government has no right to stay her. The temporary injunction is dissolved and a permanent injunction is denied. I will allow you an exception.

Mr. HODES: Thank you.

Mr. MARTIN: When would you like me to submit a proposed order?

26 The COURT: Any time. Submit it now, if you want to.

Mr. MARTIN: Well, I have to draw it.

The COURT: All right.

Mr. MARTIN: I couldn't anticipate——

The CLERK: You give it to me, Mr. Martin, and I will present it to the Judge, when you have drawn it.

Mr. MARTIN: All right. Do you desire——

Mr. HODES: Would your Honor consider the submission of briefs on this point?

The COURT: No. I know I am right; and I would like to have it

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go up, if your are going to take it up, and see whether there is any sense left in the Government or not.

Mr. MARTIN: Do you in a case of this character consider it important that findings of fact and conclusions of law be submitted——

The COURT: Well, if you desire to appeal, there is only one fact I think I need state, and I have already stated it. The only evidence before the Court is this: that this owner desires possession of the premises for the purpose of removing them from rent control, and not to be reinstated to that classification. I find that as a fact, and I consider that that's the only fact necessary here.

Mr. HODES: Well, may we have leave to submit our proposed findings——

27 The COURT: You may submit your proposed and you may submit contrary proposed——

Mr. MARTIN: Judge, may I ask if your finding includes that the owner desires in good faith? because that's part of the statutory requirement.

The COURT: Of course I so find. Of course it is in good faith. It couldn't be anything else. And whatever her reasons may be for withdrawing it, they are immaterial in a case of this kind.

Mr. MARTIN: That's precisely the view we took of the case.

The COURT: Otherwise this section of the statute is absolutely meaningless.

Mr. HODES: If your Honor please, it may interest your Honor to know that this question has been directly passed upon by the District Court in California, in which the holding was directly contrary——

The COURT: To what I have decided? Then take it up, if you will, and get it straightened out.

Mr. MARTIN: May I call your attention, as a matter of interest, to the fact that in that California case it appeared that at least one of the premises involved was an apartment house, and that can't very well be removed from the rental market in fact, except by tearing it down.

* * * * * * *

28 *Plaintiff's Exhibit 1 at Trial September 17, 1948*

To Miss Dorothy Blake:

You are hereby notified to vacate and quit the premises rented by you from me your landlord, and now occupied by you, as tenant, being known as No. 74 Murray Street in the City of Newark, County of Essex, State of New Jersey, on the first day of July next, and to deliver possession thereof to me on that day. Notice is further given you that such possession is required for the immediate purpose of permanently withdrawing said premises from the rental

market, as provided in Section 209(a)(5) of the Housing and Rent Act of 1947, as amended by Section 204(d) of the Housing and Rent Act of 1948, approved March 30, 1948, which substitutes a new Section 209(a)(5).

Dated: April 12, 1948.

(S) ELIZABETH ELLIS DURR,
Landlord.

(S) MARTIN & REILEY,
Attorneys for Landlord.

It is hereby stipulated that the above is a true copy of Plaintiff's Exhibit 1 which was received in evidence at the trial on September 17, 1948, the original of said exhibit having been lost.

29 Dated: October 4, 1948.

(S) MARTIN & REILEY,
By J. H. THAYER MARTIN,
Attorneys for Defendant-Appellee.

(S) SYLVAN D. FREEMAN,
Per S. HODES,
Attorney for Plaintiff-Appellant.

Plaintiff's Exhibit 2 at Trial

Summons

The State of New Jersey to Dorothy Blake:

You are summoned to answer the annexed complaint of Elizabeth Ellis Durr in an action at law in the Essex County Circuit Court, wherein the said Elizabeth Ellis Durr demands of you the possession of a tract of land with the appurtenances thereon, situate in the City of Newark, Essex County, State of New Jersey, and more particularly described in the said complaint. And take notice that unless you file your answer to said complaint with the Clerk of the Essex County Circuit Court, at Newark, within twenty days after service upon you of this writ and of the annexed complaint, judgment will be entered against you and you will be turned out of possession of said land.

Witness, William A. Smith, Esq., one of the Judges of our said Essex County Circuit Court at Newark, this 9th day of July, 1948.

(S) RUSSELL C. GATES,
Clerk.

(S) MARTIN & REILEY,
Attorneys for Plaintiff.

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30 Essex County Circuit Court

Action at Law

ELIZABETH ELLIS DURR, PLAINTIFF

v.

DOROTHY BLAKE, DEFENDANT

Complaint

The plaintiff, Elizabeth Ellis Durr, wife of John E. Durr, residing at 108 South Kingman Road, in the Village of South Orange, Essex County, New Jersey, demands of the defendant, Dorothy Blake, possession of a certain tract of land, together with the appurtenances thereon, situate in the City of Newark, Essex County, New Jersey, more particularly described as follows:

First Tract: Beginning in the northerly line of Murray Street at a point therein distant one hundred fifty-five feet westerly from the northwest corner of Broad and Murray Streets; thence running northerly and parallel with Broad Street one hundred feet; thence westerly parallel with Murray Street twenty-six feet; thence southerly and parallel with the first course one hundred feet to Murray Street; and thence easterly along the same twenty-six feet to the place of beginning.

Second Tract: Beginning in the northerly line of Murray Street at a point therein distant one hundred eighty-one feet westerly from the northwest corner of Broad and Murray Streets; thence running northerly parallel with Broad Street one-hundred feet; thence westerly parallel with Murray Street twenty-nine feet; thence southerly parallel with the first line one hundred feet to Murray Street; thence easterly along the same twenty-nine feet to the place of beginning.

31 Said premises being known as No. 74 Murray Street.

And plaintiff also demands the sum of Five Hundred Dollars for mesne profits and damages.

And the plaintiff says that her right to the possession of said premises accrued on the first day of July, 1948, and that the defendant wrongfully deprives her of the possession thereof.

Attached hereto is a bill of particulars of the plaintiff's claim or title to the premises in question.

(S) MARTIN & REILEY,
Attorneys for Plaintiff.

Bill of Particulars

To the Defendant, Dorothy Blake:

The following is a bill of particulars of the plaintiff's claim or title to the premises in question and includes an abstract of such documentary evidence of title as the plaintiff intends to offer in evidence upon trial.

1. Deed from Frederick P. Wolfinger and Rashida N. Wolfinger, his wife, dated September 30, 1920, conveying the premises in question, situate in the City of Newark, Essex County, New Jersey, more particularly described in said deed and in the complaint
32 herein, which said deed is recorded in the office of the Register of the County of Essex in Book I 64, pages 58-59 of deeds for said county.

2. Lease dated August 1, 1944, made between Elizabeth Ellis Durr and John E. Durr, her husband (as owners), and Dorothy Blake (under the name D. Blake) (as tenant), for the period of one year beginning August 1, 1944 and ending August 1, 1945 at the annual rental of $780, payable in monthly installments on the first day of each month. Said lease contained a provision that at the expiration of the said term or the termination of the lease, the said D. Blake would quit and surrender the premises.

3. On April 23, 1945, said Dorothy Blake was notified in writing by said Elizabeth Ellis Durr and John E. Durr that the lease above mentioned would not be renewed. A true copy of said notice is hereto annexed.

4. The Office of Price Administration rent regulations bearing date April 1, 1943, Section 6(a) provided that:

> "So long as the tenant continues to pay the rent * * * no tenant shall be removed from any housing accommodations, by action to evict or to recover possession * * * notwithstanding that such tenant has no lease or that his lease * * * has expired or otherwise terminated * * *."

Thereafter the tenancy under said regulations has been carried since said date on a month to month basis with rent payable on the first day of each month.

33 5. Under the Housing and Rent Act of 1948, approved March 30, 1948, Section 209(a)(5) of the Housing and Rent Act of 1947 was amended by Section 204(d) which substitutes a new section 209(a)(5) which provides that the tenant may be removed if

> "(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of

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withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; * * *."

6. A written notice to vacate and demanding possession was served upon the defendant, Dorothy Blake, on April 22, 1948, a true copy of which is annexed hereto.

7. Plaintiff desires immediate possession of said premises for the immediate purpose of withdrawing said premises from the rental market and of conveying said premises to a prospective purchaser who desires to occupy said premises as a private residence for himself and his family.

(S.) MARTIN & REILEY,
Attorneys for Plaintiff.

Notice of Termination of Lease

108 South Kingman Road,
South Orange, New Jersey.

April 23rd, 1945

34 D. Blake
74 Murray Street
Newark, New Jersey

DEAR MADAM: This is to notify you, that we will not renew your lease on the house at 74-76 Murray Street, Newark, New Jersey, which expires on August 1st, 1945.

Yours very truly,

(S.) JOHN E. DURR,
(S.) ELIZABETH ELLIS DURR.

(This notice was sent by registered mail and return receipt by the U. S. Post Office Department was signed by "D. Blake" and the date of delivery April 24, 1945.)

Notice to Vacate and Demand for Possession

To Miss Dorothy Blake:

You are hereby notified to vacate and quit the premises rented by you from me your landlord, and now occupied by you, as tenant, being known as No. 74 Murray Street in the City of Newark, County of Essex, State of New Jersey, on the first day of July next, and to deliver possession thereof to me on that day. Notice is further given you that such possession is required for the immediate purpose of permanently withdrawing said premises from the

rental market, as provided in Section 209(a)(5) of the Housing and Rent Act of 1947, as amended by Section 204(d) of the Housing and Rent Act of 1948, approved March 30, 1948, which substitutes a new Section 209(a)(5).

35 Dated: April 12, 1948.

(S) ELIZABETH ELLIS DURR,
Landlord

(S) MARTIN & REILEY,
Attorneys for Landlord.

Portions of Plaintiff's Exhibit 3 at Trial

Notice of Motion

To Messrs. Brass and Brass, Attorneys for Defendant:

Please Take Notice that on the 10th day of September, 1948, at ten o'clock in the forenoon of that day, or soon thereafter as counsel can be heard, at the Court House, in the City of Newark, County of Essex and State of New Jersey, we shall move before the Circuit Court judge hearing motions on that day, to strike out the answer filed by the defendant in this cause, on the ground that the said answer is sham, and was interposed solely for the purpose of delay; and we will ask for a summary judgment and for an order directing the taking of proofs as to damages.

Plaintiff will reply upon the annexed affidavit and schedules in support of this motion.

36 Dated September 1, 1948.

(S.) MARTIN & REILEY,
Attorneys for Plaintiff.

Affidavit

STATE OF NEW JERSEY,
County of Essex, ss:

ELIZABETH ELLLIS DURR, being duly sworn according to law on her oath says:

I am the owner of premises No. 74 Murray Street, in the City of Newark, Essex County, New Jersey, more particularly described in the complaint filed herein. I acquired title to said premises from Frederick P. Wolfinger and wife by deed dated September 30, 1920, copy of which is annexed hereto marked Schedule A.

On August 1, 1944, my husband joined with me in executing a written lease with the defendant herein, Dorothy Blake (under the name of "D" Blake) for the leasing of said premises for the period

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of one year from said date, copy of which lease is also annexed hereto marked Schedule B. Since that time the defendant has continued in exclusive possession and has occupied the premises as a rooming house. Prior to the expiration of the lease, I notified the defendant in writing that it would not be renewed but upon the termination of the lease, the defendant was continued as
37 a monthly tenant under the Federal Emergency Price Control Act of 1942, and the amendments thereto.

On or about November 1, 1945, I caused a "For Sale" sign to be placed on said premises, setting forth the name of a licensed real estate broker as the person in charge of the sale of said premises. On various dates thereafter, the tenant repeatedly and consistently refused to admit me or the broker or any prospective purchasers to inspect the premises.

On one occasion, namely January 27, 1947, the broker's agent requested an appointment at any time convenient to the tenant for the purpose of showing the premises to propective purchasers from the State of Pennsylvania, who were coming principally for that purpose. This request was definitely refused. Again on January 30, 1947, and February 1, the tenant refused to admit the broker's agent when she called with other prospective buyers.

This property was advertised by the broker in the Newark Evening News about once a month from December, 1945, to September, 1946, and every month in the Real Estate Digest from September, 1946 to July, 1947. Following many of these advertisements, the broker or his agent communicated with me and requested that I accompany a prospective buyer to show the premises, or the broker or his agent would endeavor to show the premises, but at no time between November, 1945 and July, 1947, was any prospective buyer allowed to inspect the premises.

38 On April 24, 1947, I served the tenant with a notice to quit and surrender the premises on the first day of June, 1947. Thereafter, my attorneys, in order to comply with the Housing Regulations, served an additional notice on May 26, 1947, making demand for possession of the premises on July 1, 1947. When the tenant failed to deliver possession on July 1, suit was instituted in the District Court of the Essex County Judicial District on July 11, 1947, on the ground of refusal to allow an inspection of the premises either by the landlord or her agent or any prospective purchaser. That suit was dismissed in November, 1947, on the ground that the right of an inspection was no longer a cause for removal of the tenant under the Housing and Rent Act of 1947, which became effective July 1, 1947.

During the month of October, 1947, Lawrence H. Rubel, the attorney for the tenant in the District Court suit, arranged an appointment for me to show the premises to a prospective buyer.

The tenant admitted us, but she refused to show the master bedroom or the living room. When I asked the tenant when we could see those rooms, she replied that at no time would she disturb her tenants to show those rooms. This applicant was interested in the house and in the location, and she actully purchased a short time thereafter a house across the street from the premises in question.

Thereafter, I caused to be served upon said tenant on April 22, 1948, a notice demanding possession on July 1, 1948, stating that such possession was required for the immediate purpose
39 of permanently withdrawing said premises from the rental market as provided in the Federal Act, as appears by the affidavit of Mary C. Durr, annexed hereto, marked Schedule C.

The premises are subject to a mortgage of $8,000 dated March 8, 1928, which was due and payable on March 8, 1930.

The mortgagee for over a year has been demanding payment and the only way I can satisfy the mortgage is to sell the property. I received an offer of $10,000 on or about June 15, 1948, from a prospective purchaser, but on condition that the property on inspection be found satisfactory. This prospective purchaser desires to occupy the premises for himself personally and his family. I desire to remove the premises from the rental market, my reason being that it is vitally essential that I sell the property in order to satisfy the mortgage. In addition to the prospect above mentioned, I have other prospective purchasers in mind, and they have all declined to buy until they have seen the entire premises, and these other purchasers also desire to occupy the premises for themselves personally and their families.

Following the institution of this suit, the defendant herein signed a statement prepared by her attorney, Sidney A. Brass, agreeing to allow an inspection of the interior and exterior of the premises on July 27, 1948, and that upon receiving reasonable notice in writing from me, or my agent, she would permit other persons duly authorized by me to inspect the premises. A copy of said agreement is annexed hereto marked Schedule D.

40 On July 27, I attended at the premises with two applicants. I proceeded to show one of the applicants through the house at 10:30 a.m. but the tenant again declined to show the living room or the master bedroom, being the two choicest rooms in the house, her reason being that the roomers were asleep in those rooms; the second applicant, who is the wife of the applicant who made the $10,000. offer, was taken through about a half hour later and she also was not permitted to see either of the said two rooms. Thereupon request was made for the husband of the second applicant to come in one evening or on Saturday when the rooms

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would be vacant, but that request was refused. A definite appointment was then made through defendant's attorney for the showing of the premises on August 3, at 10:30 a.m. and the applicants were so advised by me and by my attorneys.

On August 2, 1948, in the evening, I received a special delivery letter stating the tenant would not be available the next morning to keep her appointment and asking me to make a further appointment in person. This change necessitated my making a personal trip early the next morning to the homes of the two prospective purchasers with whom I had made appointments, in order to save them loss of time from their work.

During the week of August 3 to August 10, I called at the premises twice to make another appointment, but was unable to get in. On August 16, the tenant agreed to show the premises on August 19, but repeated to me that she would not show the above mentioned two rooms.

41 On application to her attorney he arranged for her to show the entire premises, and on August 19, she did for the first time show all the rooms, excepting the closets and kitchen pantry, to two prospective purchasers, one of whom I brought and one brought by the broker's agent. Neither of these were the proposed purchaser who made the definite offer of $10,000. above mentioned.

On application to tenant's attorney for an appointment for Saturday, August 21 or Monday, August 23 at two p.m. to show the premises to the person making the $10,000. offer, he reported that the tenant agreed to show the premises on August 23 at two p.m. On Saturday morning, August 21, the tenant telephoned me that she was expecting a special delivery letter from a brother who was coming to visit her, and that she would have to cancel the appointment for August 23 at two p.m., but would allow an inspection at 10:30 to 11:00 a.m. My broker immediately contacted the applicant, but because of his occupation as a baker and also because of other employees being away on vacation, he said it was impossible for him to leave his work for a 10:30 a.m. inspection, but that he could get away any Saturday or Monday at two p.m. or any evening. The broker's agent then called on the tenant at one p.m on Saturday, August 21 and requested that she allow the purchaser to make an inspection at two p.m. that day, but the tenant stated she would make no appointments whatever for any Saturday, Sundays or holidays or for any evenings. The tenant further advised me that she would make no further appointments during her brother's visit and that she did not know how long he would stay with her, as appears by affidavit of Helen M. Durr, Schedule E annexed.

42 If the most desirable applicants do not purchase after they have inspected the premises, I desire to have the premises vacant so that I can put them into shape to sell, and I propose to sell to persons who will occupy the premises and not offer it for rent.

(S) ELIZABETH ELLIS DURR.

Subscribed and sworn to before me this 1st day of September, 1948.

CHARLES F. SNOVER,
A Master in Chancery of New Jersey.

• • • • • • •

To Miss Dorothy Blake:

You are hereby notified to vacate and quit the premises rented by you from me your landlord, and now occupied by you, as tenant, being known as No. 74 Murray Street in the City of Newark, County of Essex, State of New Jersey, on the first day of July next, and to deliver possession thereof to me on that day. Notice is further given you that such possession is required for the immediate purpose of permanently withdrawing said premises from the rental market, as provided in Section 209(a)(5) of the Housing and Rent Act of 1947, as amended by Section 204(d) of the Housing and Rent Act of 1948, approved March 30, 1948, which substitutes a new Section 209(a)(5).

Dated: April 12, 1948.

(S) ELIZABETH ELLIS DURR,
Landlord
(S) MARTIN & REILEY,
Attorneys for Landlord.

• • • • • • •

To: ELIZABETH ELLIS DURR,
c/o Martin & Reiley, Esqs.
744 Broad Street,
Newark 2, New Jersey

This Is To Advise You that I will, on Tuesday, July 27th, 1948 be present at my home at ten-thirty o'clock in the morning and at that time permit any person or persons who appear with the duly authorized representative of the owner of the premises to make an inspection of the premises both on the interior and exterior; and upon receiving reasonable notice in writing from the landlord or her agent of an agreeable time and an agreeable date,

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I will permit other persons duly authorized by the landlord to inspect the interior and exterior of the premises hereafter.

(S) DOROTHY BLAKE.

Dated: July 23, 1948.

Affidavit of Dorothy Blake Upon Motion to Strike Her Answer in Ejectment Suit

STATE OF NEW JERSEY,
County of Essex, ss:

DOROTHY BLAKE, of full age, being duly sworn according to law, upon her oath deposes and says:

44 I am the defendant in the above entitled cause and am the tenant in the premises known as No. 74 Murray Street, in the City of Newark, Essex County, New Jersey.

On or about November 1, 1945 the landlord caused a "For Sale" sign to be placed on said premises and at a subsequent date replaced said "For Sale" sign with another one. A "For Sale" sign has remained on the said premises from the time that it was first placed there by the plaintiff to the present date.

I deny that on various times thereafter I repeatedly and consistently refused to admit the plaintiff or the broker or any prospective purchasers to inspect the premises. I deny that on January 27, 1947 the broker's agent requested an appointment at any time convenient to me for the purpose of showing the premises to prospective purchasers from the State of Pennsylvania who were coming principally for that purpose. I deny that this request was definitely refused. I further deny that again on January 30, 1947 and on February 1, I refused to admit the broker's agent when she called with other prospective buyers. I deny that I refused to allow any prospective buyer to inspect the premises between November, 1945 and July, 1947. I further deny that a suit against me instituted in the Essex County Judicial District Court on July 11, 1947 was dismissed on the grounds that the right of an inspection was no longer a cause for removal of the tenant under the Housing and Rent Act of 1947. I further deny that I have refused any prospective purchaser an inspection of the premises at a convenient and reasonable time.

45 I state that at all times when inspections were being made that I refused to awaken roomers who were asleep in their rooms due to the fact that they work nights and the inspections were requested at a time of the day when they were asleep. On these occasions I informed the plaintiff, her agent and the prospective buyers that it would be necessary for them to

return at a later hour when the persons who were sleeping awakened. On three occasions, however, I did awaken persons who were asleep in their rooms and was informed by them not to do so again. I have never declined to show the plaintiff or any prospective purchasers the living room since there is no living room in the house and all of the rooms are bedroom. The only time that I have refused requests for an inspection is when the time was not convenient due to the fact that I had been away from my home.

On a number of occasions the plaintiff has made appointments with me for an inspection of the premises but has failed to appear. Within the past month the plaintiff or her agent have appeared at the premises and inspected same at least seven or eight times and on three different occasions Helen M. Durr, who is the real estate salesman came to my house with a so called prospective purchaser and as soon as they had completed an inspection the plaintiff would come into the house with other so called prospective purchasers in order to make an inspection. The only time that I refused to let the so called prospective purchasers or the plaintiff or her agent see the pantry is when I had some personal belongings in it and were to be removed first. On all other occasions, the pantry was open for inspection.

46 I further state that I am the tenant of the said premises and have been residing in the said premises since August 1, 1944 when they were leased to me and that I still do reside in the said premises. When I first rented the premises I occupied three rooms and rented the other five rooms to roomers but due to the higher cost of living and the fact that I have no other source of income, I have rented an additional room and now reside in two rooms on the first floor of the premises. I further state, as is affirmed by the affidavit of the plaintiff, Elizabeth Ellis Durr and Helen M. Durr, that the notice to vacate dated April 12, 1948 and which is the basis for these proceedings is not supported by the affidavits of the plaintiff and that while the notice to vacate, upon which these proceeding are based, sets forth as grounds thereof Section 209(a)(5) which provides: "The landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such;", the affidavit of the plaintiff, Elizabeth Ellis Durr, states throughout that she has been attempting to sell the premises and "I desire to have the premises vacant so that I can put them into shape to sell, and I propose to sell to persons who will occupy the premises and not offer it for rent." I further state that the affidavit of Helen M. Durr also discloses throughout that the premises are being offered for sale.

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I state that the plaintiff is seeking to evict me in order to sell these premises free and clear of my tenancy and not for the pur-
47 poses alleged in the notice of withdrawing said premises from the rental market.

I further state that under Section 209(a)(3) of the Housing and Rent Act of 1947, as amended, the plaintiff's remedy is therein provided by Congress since said Section reads as follows: "The landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser."

I have at all times permitted an inspection of the premises by the plaintiff and her agent, Helen M. Durr with alleged prospective purchasers in attendance although the Lease made by the defendant and her husband with me, dated August 1, 1944, makes no provision for an inspection and I have at no time been unreasonable insofar as permitting inspections is concerned while on the other hand I have been requested by the plaintiff and her agent to permit inspections at times when I could not be at home or when persons were asleep in different rooms of the house.

(S) DOROTHY BLAKE.

Sworn and subscribed to before me this 9th day of September, 1948.

(S) ROBERT E. ROSENBERG,
A Master in Chancery of New Jersey.

48 In United States District Court

Findings of Fact and Conclusions of Law of District Court

The plaintiff having filed his complaint under the Housing and Rent Act of 1947, as amended, seeking an injunction to restrain the defendant from proceeding to evict the tenant from certain premises described in the complaint, and an order to show cause having been issued thereon upon the complaint and affidavits in support of plaintiff's motion, and a temporary restraining order having been made, and the cause having come on for final hearing on September 17, 1948 before the Hon. Guy L. Fake, Judge, presiding, and the plaintiff being represented by Samuel Hodes, of counsel, and the defendant appearing in person and by J. H. Thayer Martin, of Martin & Reiley, as counsel, and the plaintiff having offered certain exhibits which were marked as such, and the defendant having offered testimony to establish her good faith, and the defendant having testified that she was seeking in good faith to recover possession of said premises for the purpose of withdrawing the same from the rental market, and the plaintiff having offered no evidence in rebuttal, and the court having considered the allegations in said

complaint, and said exhibits and said testimony, and having heard the argument of counsel for the plaintiff, makes the following

Findings of Fact

1. That the plaintiff as Housing Expediter brings this action for an injunction pursuant to Section 206 of the Housing and Rent Act of 1947, as amended, for the purpose of enjoining the defendant from evicting from the premises described in the complaint, the tenant in occupation thereof.

49 2. That the continued possession of the tenant is solely under the said Housing and Rent Act, as amended.

3. That the defendant on or about April 22, 1948, gave notice to the tenant pursuant to Section 209(a)(5) of the Housing and Rent Act of 1947, as amended by Section 204(d) of the Housing and Rent Act of 1948, approved March 30, 1948, that the defendant desired said tenant to deliver possession of the premises in question to the defendant on the first day of July next thereafter, and that such possession was required for the immediate purpose of permanently withdrawing said premises from the rental market as provided for in said section.

4. That the tenant did not surrender possession of the said premises on July 1, 1948 or at any time thereafter.

5. That said defendant after July 1, 1948, commenced an action in an appropriate state court to evict said tenant from said premises.

6. That the defendant in good faith seeks to recover possession of said premises for the immediate purpose of withdrawing the same from the rental market.

Conclusions of Law

1. That the reason why the defendant desires to withdraw said premises from the rental market is immaterial and irrelevant so long as the defendant seeks in good faith to recover pos-
50 session thereof for the immediate purpose of withdrawing the same from the rental market.

2. That said paragraph (5) of said Section 209(a) of said Act, as amended by Section 204(d) of the Housing and Rent Act of 1948, is to be interpreted as it reads and is not limited or modified by paragraph (3) of said section of said act, or by any other paragraph thereof.

3. That the temporary restraint heretofore granted in this action should be forthwith vacated and dissolved.

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4. That the injunction prayed for in the complaint should be denied.

5. That the complaint should be dismissed.

Dated: Newark, New Jersey, September 20, 1948.

(S) GUY L. FAKE,
Judge U. S. District Court.

In United States District Court

Final Judgment Entered September 20, 1948

This cause came on for final hearing on September 17, 1948, on the complaint of the plaintiff for an injunction restraining the defendant from prosecuting an action in a state court of the
51 State of New Jersey to eject a tenant from premises owned by the defendant and mentioned and described in the complaint; and the plaintiff being represented by Samuel Hodes, Esq., of counsel, and the defendant being present and represented by J. H. Thayer Martin, of Martin & Reiley, as counsel; and the parties having submitted evidence, and the court having considered the complaint and the evidence submitted; and having heard the argument in support of the complaint and the defendant's opposition thereto; and the court having this day made its written findings of fact and conclusions of law, and being fully advised in the premises, now therefore,

It is hereby ordered, adjudged and decreed that the restraint heretofore ordered in this court in this cause be vacated and dissolved; and that the application of the plaintiff for an injunction be denied; and that said complaint be dismissed.

Dated: Newark, New Jersey, September 20, 1948.

(S) GUY L. FAKE,
Judge U. S. District Court.

In United States District Court

Notice of Appeal—September 28, 1948

Notice is hereby given that Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff above-named, does hereby appeal to the Circuit Court of Appeals for the Third Circuit
52 from the Final Judgment entered in this action on September 20th, 1948.

Dated: Newark, New Jersey, September 28, 1948.

SYLVAN D. FREEMAN,
Chief Litigation Section,
Office of the Housing Expediter,
350 Fifth Avenue, New York 1, N. Y.,
MAX W. MEISNER,
Chief Area Rent Attorney,
Attorneys for Appellant.

Address of Attorney on whom all papers are to be served:

MAX W. MEISNER,
151 Washington Street,
Newark, New Jersey.

In United States Court of Appeals

Order to Show Cause and Temporary Restraining Order—September 29, 1948

Upon the annexed affidavit of Samuel Hodes duly sworn to the 29th day of September, 1948, and it appearing that an appeal is pending in this Court from a final judgment entered after trial in the United States District Court for the District of New Jersey dismissing the plaintiff's complaint in an action brought to enjoin the defendant from proceeding with an allegedly illegal ejectment action instituted by the defendant against her tenant, one Dorothy Blake, and it further appearing that the status quo should be preserved pending the determination of the application herein, and the
53 Court being duly advised in the premises:

It is ordered that the defendant appear and show cause at a Term for motions of this Court, to be held in the United States Courthouse, Ninth and Chestnut Streets, Philadelphia, Pennsylvania, on the 4th day of October, 1948, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made effective pending the determina-

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tion of the appeal herein, or until further order of this Court, directed to the defendant and defendant's agents, servants, employees, attorneys and marshals, and all persons in active concert or participation with any of them, enjoining them jointly and severally from taking any further steps in the prosecution of the pending ejectment action aforesaid, in which the defendant here is the plaintiff and one Dorothy Blake is the defendant, and

It is further ordered that from the date of service of a copy of this Order and until the further order of this Court, that the defendant and defendant's agents, servants, employees, attorneys and marshals, and all persons in active concert or participation with any of them, be and they hereby are jointly and severally temporarily restrained from taking any further steps in the prosecution of the pending ejectment action aforesaid, in which the defendant here is the plaintiff and one Dorothy Blake is the defendant.

Sufficient reason appearing therefor, Let service of a copy of this Order, together with a copy of the papers upon which it is issued, be good and sufficient, if made upon the defendant or her attorneys on or before the 30th day of September, 1948.

54 Dated: Newark, New Jersey, September 29th, 1948.

(S) McLAUGHLIN,
Judge of the Circuit Court of Appeals, Third Circuit.

Affidavit in Support of Order to Show Cause

STATE OF NEW YORK,
County of New York, ss:

Samuel Hodes, being duly sworn, deposes and says:

I am a Litigation Attorney, employed in the office of the attorney for the plaintiff, and am familiar with the facts involved herein.

I make this affidavit in support of the within application for an injunction pending a determination of the appeal which has been taken to this Court in the within action.

The facts pertinent to this application are as follows:

On September 10, 1948, the plaintiff instituted the within action by filing his complaint with the Clerk of the District Court in Newark. The action is brought pursuant to Section 206 of the Housing and Rent Act of 1947, as amended, and is predicated on an alleged violation by the defendant of Section 209 of the said Act. As alleged in the complaint, the defendant is charged with having illegally instituted an ejectment action in the Essex County Circuit Court against her tenant, Dorothy Blake.

55 On September 10, 1948, on application by the plaintiff and after hearing the attorneys for the parties hereto, the District

Court issued an Order to Show Cause as a preliminary step in connection with plaintiff's motion for a temporary injunction. The said Order to Show Cause contained a temporary restraining order which restrained the defendant from continuing with her ejectment action mentioned above. The said Order to Show Cause came on for argument before Judge William J. Smith on September 13, 1948, and after hearing argument the Court granted the plaintiff's said motion and issued an order on or about September 22, 1948, by the terms of which the defendant was temporarily enjoined from proceeding with her ejectment action against the tenant Dorothy Blake until September 23, 1948. In granting the said motion, Judge Smith orally directed that efforts be made to arrange for a trial of the action before September 23, 1948. Pursuant to the said instructions, the case was set down for trial and was tried before Judge Guy L. Fake on September 17, 1948. Upon the conclusion of the trial, the Trial Court rendered its decision dissolving the temporary injunction and dismissing the plaintiff's complaint. Thereafter, on September 20, 1948, the Trial Court made its findings of fact and conclusions of law and rendered a final judgment in the action, which judgment was dated September 20, 1948. A copy of the said findings and judgment will be exhibited to the Court on this application.

On September 28, 1948, plaintiff took an appeal from the final judgment aforesaid by filing a Notice of Appeal with the Clerk of the District Court in Newark.

56 On September 15, 1948, pursuant to the provisions of the constitution of New Jersey, the ejectment action, which was pending in the Essex County Circuit Court, was transferred to the Superior Court. In the said action, the plaintiff therein (the defendant in the within action) made a motion to strike out the answer of the tenant Dorothy Blake. The said motion came on to be heard in the Superior Court in Newark on September 24, 1948. Your deponent, on behalf of the plaintiff herein, appeared on the said motion on that day as amicus curiae and requested that the said motion be adjourned for the purpose of affording the plaintiff herein an opportunity to make this application for an injunction. The motion for summary judgment in the said Superior Court was thereupon adjourned to October 1, 1948.

The plaintiff, on this application, contends that the Trial Court herein committed error and that the findings and the judgment rendered by the Trial Court are based upon an erroneous interpretation of Section 209 of the Housing and Rent Act of 1947, as amended, and are in conflict with the provisions thereof and that there is no legal basis to support the said judgment. The plaintiff contends that his complaint should have been sustained at the trial and that the relief therein requested should have been granted.

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The factual situation, as clearly established at the trial, and conceded by the defendant thereat, are briefly as follows:

The defendant was and is the owner and landlord of controlled housing accommodations known as 74 Murray Street, Newark, New Jersey. The said premises were and are leased and oc-
57 cupied by the tenant Dorothy Blake. The maximum legal rent for said premises is $65.00 per month.

On or about April 22, 1948, the defendant served a written notice to vacate the premises, dated April 12, 1948, on the tenant Dorothy Blake. The said notice was received in evidence as Plaintiff's Exhibit 1.

On or about July 9, 1948, the defendant instituted an ejectment action against the tenant Dorothy Blake in the Essex County Circuit Court. A copy of the summons, complaint and bill of particulars in the said action were received in evidence as Plaintiff's Exhibit 2.

Thereafter, the defendant herein, as the plaintiff in the said ejectment action, made a motion for summary judgment therein. A copy of the said motion papers was received in evidence as Plaintiff's Exhibit 3.

The lease of the tenant Dorothy Blake had expired in October, 1945, and she has continued in possession ever since under the Federal Rent Law.

The above evidence reveals the following interesting situation:

The written notice above referred to, dated April 12, 1948 (Plaintiff's Exhibit 1), is a demand upon the tenant for possession of the premises "for the immediate purpose of permanently withdrawing said premises from the rental market, as provided in Section 209(a)(5) of the Housing and Rent Act of 1947, as amended by Section 204(d) of this Housing and Rent Act of 1948, approved March 30, 1948, which substitutes a new Section 209(a)(5)."
58 The above quoted portion of the said notice reveals that the defendant landlord asserted therein the specific statutory grounds upon which she intended to rely in seeking to evict the tenant Dorothy Blake. The service of such a notice is required by Section 209(a)(6)(c).

An examination of Plaintiff's Exhibits 2 and 3 discloses the following significant facts:

In the bill of particulars in the ejectment action mentioned above (Plaintiff's Exhibit 2), paragraph 7 reads as follows:

"V. Plaintiff desires immediate possession of said premises for the immediate *purpose* of withdrawing said premises from the rental market and *of conveying said premises to a prospective purchaser who desires to occupy said premises as a private residence for himself and his family*" (Emphasis supplied).

In the motion papers in the ejectment action (Plaintiff's Ex-

hibit 3), the last paragraph of the affidavit, signed by the defendant herein, reads as follows:

"If the most desirable applicants do not purchase after having inspected the premises, I desire to have the premises vacant so that I can put them into shape to sell and *I propose to sell* to persons who will occupy the premises and not offer it for rent" (Emphasis supplied).

In addition to the above evidence indicating that the defendant's purpose in evicting her tenant is to sell the house, we have the following testimony of the defendant which was adduced on
59 cross-examination at the trial, which incontrovertibly establishes that was her intention:

"Q. Mrs. Durr, you have a mortgage of $8,000 on the house, is that right? A. Yes.

Q. And the mortgagee is requesting payment; it is an open mortgage? A. Yes.

Q. And you need money to make that payment, isn't that right? A. I will have to sell the house in order to pay that mortgage.

Q. And that's why you want to get this tenant out, is that right? A. I have to sell the house in order to pay the mortgage.

Q. And that's why you want to get this tenant out. It is easier to sell——

The COURT: I think that follows, as a matter of fact, of course.

Mr. MARTIN (defendant's attorney): That's her reason.

The COURT: Certainly.

Mr. MARTIN: We admit that."

The trial Court on its own motion struck out the testimony of the defendant relating to her intention to sell the house and stated that same was surplusage.

On the basis of all the above evidence, including the exhibits above referred to, the plaintiff contends that the maintenance of the ejectment action is in violation of the provisions of Section 209 of the Act and that pursuant to Section 206 of the Act the defendant should have been enjoined from proceeding therewith.

60 The principal question here presented is an interpretation of Section 209(a)(5), which is the section relied on by the defendant.

The said section, it will be noted, is a subsection of Section 209. A proper interpretation of the said subsection requires that it be read in the light of and together with the other portions of the section of which it is a part.

The record of the trial clearly reveals that the defendant seeks to evict the tenant Dorothy Blake for the purpose of selling the house. Her intention to remove the house from the rental market, under the circumstances, cannot be held to be of the character

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contemplated by Section 209(a)(5). The removal of the house from the rental market would, in this case, be merely an incident and by-product of and only a step in the accomplishment of the defendant's real purpose, to wit, the sale of the house.

It is to be noted that Section 209(a)(3) of the Act specifically lays down the conditions which must be met in order for a landlord to evict a tenant for the purpose of selling the house. The plaintiff contends that the said section is applicable to the facts in this case and that unless the defendant can show that she has complied with the provisions thereof, her ejectment action is illegal and constitutes a violation of the Act. The record clearly establishes that the conditions prescribed in Section 209(a)(3) have not been met or complied with by the defendants herein by reason of the fact that no contract for the sale of the house has been made. The fact was conceded by the defendant at the trial.

61 Section 209 (a)(3) reads as follows:

> "(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;"

Section 209(a)(5) reads as follows:

> "(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or"

Section 209(a)(5) was added by an amendment to Section 209 in March, 1948. Up to the present time and to the knowledge of your deponent, only two cases have been decided, besides the one at bar, in which the said Section 209(a)(5) was directly involved and interpreted.

The first such case was Woods v. Taper, which was decided on July 27, 1948, by the District Court of the United States, Southern District of California, Civil Action No. 8452-PH. In that case the very same question of law was involved as is presented in the within action. The Court there found, in a factual situation similar to the one at bar, that the contemplated eviction by the landlord of several tenants did not come within the purview of Section 209(a)(5) of the Act or of any other subsection of Section 209 of the Act. A copy of the findings of fact and conclusions of law in that action, together with the decree granting a preliminary injunction therein, will be submitted to the Court on the hearing of this application.

The other case referred to above is the case of Woods v. Palumbo, Civil Action No. 3219, which was decided on September 17,
62 1948, by the United States District Court for the Middle District of Pennsylvania. A copy of the Court's opinion in the said case will be submitted to the Court upon the hearing of this application. In the said case the facts were, for all significant purposes, identical with those involved in the case at bar, and the Court there found that the conduct of the landlord was in violation of the Act and allowed a permanent injunction.

In addition to the two cases above referred to, there is an additional source of information which can serve as an aid to this Court in determining the intention of Congress at the time it enacted Section 209(a)(5) of the Act. The said information is to be found in a memorandum issued by the Office of the Housing Expediter, which memorandum is known as Housing and Rent Act Memorandum No. 51, and in which the governmental agency charged with the duty of administering and enforcing the provisions of the Housing and Rent Act of 1947 has interpreted the meaning of Section 209(a)(5). As will be seen from the contents of the said memorandum, Section 209(a)(5) may not be used by landlords as authority to evict a tenant in any case where a sale of the premises is involved. This memorandum was considered by the Court in the Palumbo case and the interpretation contained in the said memorandum was adopted and followed by the Court in that case. A copy of this memorandum will also be presented to the Court upon the hearing on this application.

We are here presented with a situation where two District Courts within this circuit have each passed upon the meaning of
63 Section 209(a)(5) of the Act and have, in similar factual situations, arrived at conclusions which are diametrically opposed to each other.

In the instant case it is important that the status quo be retained. In the ejectment action mentioned above, which is pending in the Superior Court, a motion for summary judgment is scheduled to be heard on Friday, October 1, 1948, and if the plaintiff in said action (defendant here) is successful, the tenant will be faced with the possibility of an immediate eviction, and the plaintiff's action here may possibly become moot.

It is therefore requested that, pending the disposition of the within motion for an injunction, pending the determination of the appeal, the defendant be restrained from taking any further steps in the pending ejectment action until the determination by this Court of the within motion for a temporary injunction and that such other and further relief be granted as may be proper.

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No previous application for the relief herein requested has been made.

(S.) SAMUEL HODES.

Sworn to before me this 29th day of September, 1948.

64-83 In United States Court of Appeals

Order of Circuit Court of Appeals October 4, 1948

Present: Maris, McLaughlin and O'Connell, Circuit Judges.

Upon consideration of the appellant's application for a temporary injunction pending the determination of the appeal herein, and after argument,

It is ORDERED

1. That further consideration of the said application for a temporary injunction is continued until October 18, 1948.

2. That the parties may file their briefs in this cause in typewritten form, conforming to the provisions of Rule 24 (8) of this court.

3. The appellant's brief shall be filed on or before October 14, 1948, and the appellee's brief on or before October 18, 1948.

4. That this case be set down for argument on the merits on Monday, October 18, 1948.

By the Court,

MARIS,
Circuit Judge,

October 4, 1948.

84 United States Court of Appeals for the Third Circuit

No. 9811

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

ELIZABETH ELLIS DURR

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued October 18, 1948

Before MARIS, GOODRICH and KALODNER, *Circuit Judges*

Opinion of the Court

Filed November 8, 1948

By MARIS, *Circuit Judge:*

The plaintiff, who as Housing Expediter is in charge of rent control under the Housing and Rent Act of 1947, as amended, brought the present action in the United States District Court for the District of New Jersey against the defendant, who is the owner of certain premises used as housing accommodations at 74 Murray Street, in the City of Newark in the Northeastern New Jersey Defense-Rental Area. The plaintiff sought an injunction to restrain the defendant from prosecuting in the state courts of New Jersey an eviction proceeding against the tenant of the housing accommodations in question.

85 It appears that the defendant had given notice to her tenant to vacate because possession was "required for the immediate purpose of permanently withdrawing said premises from the rental market, as provided in Section 209 (a) (5) of the Housing and Rent Act of 1947, as amended by Section 204 (d) of the Housing and Rent Act of 1948, approved March 30, 1948, which substitutes a new Section 209 (a) (5)", and that the tenant had failed to comply with the notice. The plaintiff asserted that the eviction was prohibited by Section 209 (a) of the Housing and Rent Act and he sought and obtained a preliminary injunction against it. On final hearing, however, the district court dissolved the injunction and dismissed the complaint. Its action was based upon its conclusion that under paragraph (5) of Section 209 (a) of the Housing and Rent Act of 1947, as amended, the provisions of that section do

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not prohibit the eviction which the defendant is seeking to accomplish in the New Jersey courts. The present appeal by the plaintiff followed.

The case thus presents the question of whether Section 209 (a) of the Housing and Rent Act of 1947 [1] as amended by the Housing and Rent Act of 1948 [2] prohibits an eviction under the circumstances of this case. Those circumstances are, as the defendant readily admitted, at the hearing, that she desires possession of her property in order that she may be in a better position to sell it to a purchaser who will occupy it as his home. She further asserted, and it was not denied, that the property in question is subject to an overdue mortgage in a substantial amount and that it will be necessary for her to sell in order to pay off the mortgage. There is no suggestion that the defendant's intentions with respect to the property are not entertained in good faith.

Those provisions of Section 209 (a), as amended, which are pertinent to the question, are as follows:

86 "Sec. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

. . .

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

. . .

(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or

. . ." [3]

It is the plaintiff's contention that paragraph (3) of Section 209 (a) is the only paragraph of that section which permits eviction for the purpose of sale and that it is not applicable because the defend-

[1] Act of June 30, 1947, c. 163, 61 Stat. 200.
[2] Act of March 30, 1948, c. 161, 62 Stat. 98.
[3] 50 U. S. C. A. App. § 1899(a).

ant admittedly has not entered into a written contract to sell the premises to any specific purchaser. The defendant on the other hand urges that paragraph (5) of Section 209 (a) permits the eviction proceeding which she has instituted. She asserts that since she seeks in good faith to recover possession for the immediate purpose of withdrawing her property permanently from the rental market she comes within the express terms of paragraph (5) and that her purpose for doing so is immaterial so lang as it involves the permanent withdrawal of the property from the rental market.

In answer to this contention the plaintiff concedes, as indeed
87 he must, that the language of paragraph (5) is broad enough to cover the defendant's case but contends that the generality of this language must be limited to cases not covered by the other paragraphs of Section 209 (a). Among the other paragraphs he points to paragraph (3) which relates specifically to sales and he says that the two paragraphs must be construed in harmony with each other and accordingly paragraph (5) must be read as not applicable to the recovery of possession for the purpose of sale.

We are unable to accept the plaintiff's construction of paragraph (5). His contention that the various paragraphs of Section 209 (a) must be read together so as to harmonize with each other would have greater merit if the paragraphs in question had been enacted at the same time. The fact is, however, that while paragraph (3) was included in Section 209 (a) of the Housing and Rent Act of 1947 as originally enacted, paragraph (5) was added to that section by the Housing and Rent Act of 1948. The canon of construction upon which he relies is, therefore, not applicable. On the contrary the case is one for the application of the basic rule that where the language of a statute is plain and unambiguous there is no occasion for construction and it must be taken to mean what it clearly says. That, we think, is the case here.

Moreover we do not see any inconsistency between paragraph (5) as applied by the district court in this case and paragraph (3). While they may at times overlap, the reach of the two paragraphs is quite different. Paragraph (3) applies only when a sale has actually taken place to a purchaser who is a prospective occupant. Here the test of good faith is that the owner has bound himself by written contract to sell to a purchaser who intends to occupy the property as his home. There is no prohibition against subsequent renting by the owner if the purchaser defaults in his purchase or by the purchaser if, after acquiring title, circumstances so change that he finds it impossible to occupy the property himself.

88 In the case of paragraph (5) on the other hand the test of good faith is that the owner is willing to withdraw his property permanently from the rental market. If he evicts a tenant under this paragraph Congress has made its intention quite clear

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that the property may not again be offered for rent at least so long as Section 209 (a) (5) of the act remains in force. It will thus be seen that paragraph (3) applies only to contracted sales of a property and involves no bar to its subsequent renting while paragraph (5) applies to any sort of withdrawal of a property from the rental market, whether for purposes of sale or otherwise, when the withdrawal is to be permanent.

The legislative history of paragraph (5) supports the literal construction which the district court adopted. At the same time that Congress added paragraph (5) to Section 209 (a) by the Housing and Rent Act of 1948 it also enacted Section 302 of that act which provides:

> "Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent."

As will be seen from the Senate Committee report and the statement of Senator Cain to which we shall presently refer, these two new provisions of the law were intended by Congress to be complementary. Section 302 gave assurance that no landlord would be required by the act to keep his housing accommodation in the rental market and the addition of paragraph (5) to Section 209 (a) of the 1947 act implemented that assurance by making it possible for a landlord whose housing accommodation was in the rental market to withdraw it therefrom, if he desired to do so, by eviction of the tenant in possession. Without the inclusion of paragraph (5) in Section 209 (a) the assurance given by Section 302 would have been of no value whatever to such landlords. And they were
89 obviously the group for whose benefit it was enacted, since those owners whose accommodations were not in the rental market were not subject to the act at all and accordingly had no need of Section 302.

The Housing and Rent Act of 1948 originated as Senate Bill 2182 of the 80th Congress. As reported by the Senate Committee on Banking and Currency the bill contained paragraph (5) and Section 302 in exactly the form in which they were ultimately enacted. In the report of the committee Section 302 was explained as follows:

> "Section 302 provides that nothing in this act or in the Housing and Rent Act of 1947 shall be construed to require any person to offer any housing accommodations for rent. While the committee does not believe that the absence of such a provision implies that any person is required to offer housing accommodations for rent, in view of the fact that a similar

provision was in the Emergency Price Control Act of 1942 it has been included here to remove any doubt."[4]

The committee's explanation of paragraph (5) was as follows:

"In addition a new paragraph (5) has been added, permitting good faith recovery of possession for the immediate purpose of withdrawing housing accommodations from the rental market, and in that case the housing accommodations must not thereafter be offered for rent as such."[5]

In addition the report contained the following statement:

". . . With respect to the provisions authorizing the recovery of possession for demolition and for withdrawal from the rental market the committee felt that it was unreasonable to require the landlord to continue to operate his facilities if he seeks in good faith to 'get out of the business.'

. . .

The committee also recommends that the new legislation contain a provision expressly providing that no landlord need offer housing accommodations for rent."[6]

Senator Cain, who was in charge of the bill upon the floor of the Senate, in explaining it made the following statement relevant to the provisions here in question:

"The net result is that through this procedure, a landlord may be compelled to continue in the business of renting housing accommodations despite his desire to cease that business. While to this extent the landlord is treated as if he were engaged in a public utility, as the 1947 act is administered, he is not assured of the opportunity to make a reasonable profit. Sections 205[7] and 302 are intended to remedy this situation by allowing a landlord in good faith to regain possession of his housing accommodations if he in good faith desires to withdraw

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[4] Sen. Rep. No. 896, 80th Cong., 2d Sess. p. 13.

[5] Sen. Rep. No. 896, 80th Cong., 2d Sess. p. 13.

[6] Sen. Rep. No. 896, 80th Cong., 2d Sess. p. 4.

[7] Sec. 205 was the section of the Senate bill which originally included the amendments to Sec. 209(a) of the Housing and Rent Act of 1947.

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them from the rental market, and by providing that he shall not be required to offer them for rent."[8]

The statement first quoted from the report of the Senate committee indicates that Section 302 was taken from the Emergency Price Control Act of 1942, Section 4 (d) of which provided:

"Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent."[9]

91 It seems reasonably clear that Section 4 (d) was placed in the Emergency Price Control Act to avoid possible constitutional difficulties. In Bowles v. Willingham, 321 U. S. 503 (1944), the Supreme Court, in upholding the constitutionality of the rent control provisions of the Emergency Price Control Act of 1942 against attack upon the ground that they constituted a taking of private property for public use without just compensation, said (p. 517):

"We are not dealing here with a situation which involves a 'taking' of property. *Wilson v. Brown, supra.* By § 4 (d) of the Act it is provided that 'nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.' There is no requirement that the apartments in question be used for purposes which bring them under the Act."

And to the same effect see Wilson v. Brown, 137 F. 2d 348 (ECA 1943).

In Taylor v. Bowles, 145 F. 2d 833 (ECA 1944), the Emergency Court of Appeals placed a broad construction upon Section 4 (d) of the Emergency Price Control Act, holding that under its provisions a landlord might withdraw his housing accommodations from the rental market merely because of dissatisfaction with the existing maximum rents. We think that the almost identical provisions of Section 302 of the Housing and Rent Act of 1948 and the complementary provisions of Section 209 (a) (5), which that act added to the Housing and Rent Act of 1947, must be given an equally broad interpretation in accordance with their plain language in order to carry out the Congressional intent to avoid any constitutional difficulty.

For the reasons given we cannot agree with the contrary limited interpretation placed upon paragraph (5) by the plaintiff in his

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[8] 94 Cong. Rec. p. 1515.

[9] 50 U. S. C. A. App. § 904(d).

Housing and Rent Memorandum No. 51 upon which he now strongly relies. The power to issue regulations which Section 204 (d)
92 of the act conferred upon him was limited to Sections 202 (c) and 204 and did not extend to evictions, the subject of Section 209. The interpretation is, therefore, in no sense binding upon us and since it is in manifest conflict with both the statutory language and the Congressional intent we cannot follow it.

Nor do we think, as the plaintiff urges, that the construction of paragraph (5) which the district court adopted will thwart the purpose of the Housing and Rent Act. For that purpose was not, as the plaintiff asserts, "to preserve the continuity of possession by tenants under the 'deficit in housing.'" On the contrary the history and language of the act, as well as of the Emergency Price Control Act of 1942 which it followed, make plain that its purpose was to control inflation in rents and not to protect tenants in their possession. Control of evictions was not included in the act as an end in itself but in order to prevent circumvention and evasion of the maximum rents which it was the primary purpose of the act to impose. See Judge Magruder's discussion of this point in Taylor v. Bowles, 145 F. 2d 833, 834 (ECA, 1944). While Congress did seek, by other legislation, to meet the wartime deficit in housing, it is obvious that freezing tenants in possession of existing housing accommodations could not solve that problem. Accordingly we find that no purpose of the Housing and Rent Act of 1947 would be served by keeping a tenant in possession of a housing accommodation which the owner desires to withdraw permanently from the rental market.

We hold, therefore, that if a landlord seeks to recover possession of his housing accommodations for the immediate purpose, entertained in good faith, of withdrawing them permanently from the rental market Section 209 (a) of the Housing and Rent Act of 1947, as amended, does not stand in the way in view of the provisions of paragraph (5) of that section and of Section 302 of the Housing and Rent Act of 1948. What such a landlord proposes to do with his accommodations is wholly immaterial provided he understands and intends in good faith that they shall not, at least so long
93 as Section 209 (a) (5) of the act remains in force, again be offered for rent as housing accommodations either by him or any subsequent owner. As we have said, it is not suggested that the defendant in the present case did not entertain in good faith that understanding and intent. The district court, therefore, rightly held that she was entitled to prosecute her eviction proceedings.

The judgment of the district court will be affirmed.

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94 In the United States Court of Appeals for the Third Circuit

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, Appellant

v.

ELIZABETH ELLIS DURR

On Appeal from the United States District Court for the District of New Jersey

Present: MARIS, GOODRICH and KALODNER, *Circuit Judges.*

Judgment—November 8, 1948

This cause came on to be heard on the record from the United States District Court for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the district court in this case be, and the same is hereby affirmed.

By the Court:

MARIS,
Circuit Judge,

November 8, 1948.

[File endorsement omitted.]

95 In the United States Court of Appeals for the Third Circuit

[Title omitted]

Order Staying Mandate—November 24, 1948

Present: MARIS and KALODNER, *Circuit Judges.*

Upon consideration of the oral application by appellant,

It is ordered that the issuance of the mandate be, and it hereby is, stayed for a period of thirty days from the date of this order.

It is further ordered that upon it being made to appear that the petition for a writ of certiorari has been filed in the Supreme Court of the United States within the thirty day period, the issuance of the mandate be stayed until final disposition of the case by the Supreme Court of the United States.

It is further ordered that the restraining order of this court herein entered September 29, 1948 and now in effect shall remain in effect until the mandate of this court issues to the United States

District Court, at which time the restraining order of September 29, 1948 will be dissolved.

By the Court:

MARIS,
Circuit Judge,

November 24, 1948.

[File endorsement omitted.]

96 United States Court of Appeals for the Third Circuit

[Title omitted]

Order Directing Transmittal of Original Record—November 26, 1948

The Clerk of this Court is hereby authorized to transmit to the Clerk of the Supreme Court of the United States the original record on appeal in the above-entitled case.

MARIS,
Circuit Judge,

November 26, 1948.

97 *Clerk's Certificate*

I, Ida O. Creskoff, Clerk of the United States Courts of Appeals for the Third Circuit, Do hereby Certify the foregoing to be a true and faithful copy of the original proceedings in this court in the case of Tighe E. Woods, Housing Expediter, Appellant, vs. Elizabeth Ellis Durr, No. 9811, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 26th day of November in the year of our Lord one thousand nine hundred and forty-eight, and of the Independence of the United States the one hundred and seventy-third.

IDA O. CRESKOFF,
Clerk of the U. S. Court of Appeals, Third Circuit.

98 In the Supreme Court of the United States

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, Petitioner,

v.

ELIZABETH ELLIS DURR, Respondent

Stipulation for Printing of Record upon Petition for Certiorari

It is stipulated and agreed by and between counsel for Petitioner and counsel for Respondent that the record to be printed shall consist of the following portions of the appeal record certified to

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the Supreme Court by the United States Court of Appeals for the Third Circuit:

1. Pages 1a to 64a, both inclusive, of Appendix to Brief for Appellant, Tighe E. Woods, Housing Expediter, as filed in the Court of Appeals and certified to the Supreme Court, with the following additions:

On page *21a* of the Appendix, immediately following the words reading: "Extract from Transcript of Proceedings on Final Hearing Before the District Court September 17, 1948," omit the further recital reading: "(Transcript, p. 21)," and before asterisks, insert the following portions from the Reporter's Transcript of the trial proceedings, as filed in the District Court September 30, 1948.

99 Beginning with the word "Elizabeth" in the 13th line of page *16* of the Transcript, through the words "we admit that," in the 4th from last line on page *17*.

Beginning with the words "Mr. Hodes," in the 11th line on page *18* of the Transcript, through the words "not done so" in the 8th line of page *19*.

Following the foregoing additions, there will be included the further extract from said trial proceedings appearing at page *21a* in said Appendix, through and including page *27a*, with additional pages *28a* through and including page *64a* thereof.

2. Opinion of Court of Appeals filed November 8, 1948.

3. Judgment of Court of Appeals entered November 8, 1948, affirming judgment of District Court.

4. Order of Court of Appeals entered November 24, 1948, staying transmittal of mandate to District Court for a period of thirty days.

5. Order of Court of Appeals entered November 26, 1948, directing transmittal of appeal record to the Supreme Court.

6. This Stipulation.

Dated December 14, 1948.

PHILIP B. PERLMAN,
Solicitor General for Petitioner,
MARTIN & REILEY,
Attorneys for Respondent,
Elizabeth Ellis Durr,
by J. H. THAYER MARTIN.

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Supreme Court of the United States

Order allowing certiorari

Filed February 14, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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